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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

In the Interest of A.S. born in 2012 and M.B. born in 2020

State of North Dakota,)	Supreme Court Nos.	20200199
)		20200200
Plaintiff and Appellee,)		
)	Civil Nos.	18-2020-JV-106
vs.)		18-2020-JV-107
)		
A.J.S., mother and)		
B.J.B., father)		
)		
Defendants and Appellant.)		

BRIEF OF DEFENDANT-APPELLANT A.J.S.

Appeal from Order Entered on July 24, 2020

In District Court, Grand Forks County, State of North Dakota

The Honorable Jay Knudson

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STATEMENT OF THE ISSUES

¶1 Whether the Juvenile Court erred by finding the children are deprived.

STATEMENT OF THE CASE

¶2 This is an appeal of the Northeast Central Judicial District finding that A.S. and M.B. are deprived children pursuant to N.D.C.C. § 27-20-02(8)(a).

¶3 This is a child deprivation case where A.S. and M.B. have been removed from their parents A.J.S. and B.J.B. App. 42. A trial was held on June 24, 2020, via Zoom. App. 14. The Court determined A.S. and M.B. were deprived children within the meaning of N.D.C.C. § 27-20-02(8)(a), and ordered the children shall continue to remain in the care, custody, and control of Grand Forks County Human Services Zone for a period of twelve (12) months. App. 42. A.J.S. timely files this appeal. App. 14, 42.

STATEMENT OF FACTS

¶4 On April 1, 2020, the State filed a Juvenile Petition alleging that A.S. and M.B., the children of A.J.S. and B.J.B., are deprived children as they are without proper parental care or control, subsistence, education, or other care or control necessary for their physical mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of their parents, guardian, or other custodian. App. 9. A trial was held on June 24, 2020, via Zoom. App. 14.

¶5 A.J.S. appeared with her attorneys and B.J.B. appeared with his attorney via Zoom. App. 14; Tr. p. 3, Ins. 8-18; June 24, 2020. The State called Ms. Kateri Long to testify. App. 14; Tr. p. 9, Ins. 11-12; June 24, 2020. Ms. Long is a foster care case manager with Grand Forks County Human Service Center. App. 14; Tr. p. 10, Ins. 5-11; June 24, 2020. Ms. Long was recognized by the Court as an expert in the area of child welfare. App. 14;

Tr. p. 11, lns. 16-18; June 24, 2020. Ms. Long was assigned the foster care case manager for A.S. and M.B. in March of 2020. App. 14; Tr. p. 11-12, lns. 20-1; June 24, 2020. A.S. is seven years old and M.B. is three months old. App. 14; Tr. p. 12, lns. 2-5; June 24, 2020. Ms. Long testified that the children were placed together after initial remove, then due to A.S.'s behaviors and needs she did go through multiple placements based on recommendations with professionals at Altru. App. 14; Tr. p. 12-13, lns. 21-1; June 24, 2020. Altru recommended that A.S. be placed in a low stimulus one-on-one environment due to anxiety and behaviors A.S. was demonstrating. App. 14; Tr. p. 13, lns. 1-4; June 24, 2020. Shortly after A.S. found some regulation, M.B. was placed with A.S. to maintain sibling connection. App. 14; Tr. p. 13, lns. 6-10; June 24, 2020. Ms. Long testified that if the Court were to order a 12 month placement, it would be for them to remain in the same foster home together. App. 14; Tr. p. 14, lns. 21-25; June 24, 2020.

¶6 Ms. Long also testified that there was a supervised visit with the parents and M.B., which was an appropriate visit without incident or concern. App. 14; Tr. p. 15-16, lns. 12-2; June 24, 2020. There was also virtual visits with A.S., due to Covid. App. 14; Tr. p. 16, lns. 16-22; June 24, 2020.

¶7 The State called Ms. Sonja Olson to testify. App. 14; Tr. p. 19, lns. 13-15; June 24, 2020. Ms. Olson is a child protection worker at Grand Forks County Human Service Center. App. 14; Tr. p. 19, lns. 15-18; June 24, 2020. Ms. Olson was recognized by the Court as an expert in the area of child welfare. App. 14; Tr. p. 20, lns. 22-23; June 24, 2020. Ms. Olson was assigned the child protection worker to A.S. and M.B. in March of 2020. App. 14; Tr. p. 20-21, lns. 24-4; June 24, 2020. Grand Forks County Human Service Center became involved due to a report of suspected child abuse or neglect as A.J.S. failed

to show for a planned cesarean, but came a few days later. App. 14; Tr. p. 21, lns. 7-14; June 24, 2020.

¶8 Ms. Olson discussed concerns for M.B. the unborn child at the time, as there was minimal prenatal care, and concerns for A.S.'s appearance and odor. App. 14; Tr. p. 22, lns. 1-5, 18-20; p. 23, lns. 17-19; June 24, 2020. Upon the birth of M.B., her meconium screen was positive for methamphetamine. App. 14; Tr. p. 24, lns. 12-13, June 24, 2020. After M.B. was born, the way B.J.B. and A.J.S. spoke to A.S. raised concern to the medical staff. App. 14; Tr. p. 25, lns. 1-14; June 24, 2020. B.J.B. and A.J.S. also indicated they did not have money for lodging, clothing, food or necessities including pull ups for A.S., while at Sanford in Fargo. App. 14; Tr. p. 25, lns. 18-23; June 24, 2020. A.S. is not fully potty-trained, or attending school. App. 14; Tr. p. 26, lns. 11-14; p. 31, lns. 7-12; June 24, 2020. Ms. Olson's opinion was that the children are deprived due to the educational neglect, the developmental delays for A.S., prenatal exposure to methamphetamine, a history of domestic violence, and not meeting a child's basic needs of being clean and their emotional and physical well-being. App. 14; Tr. p. 33, lns. 13-22; June 24, 2020.

¶9 A.J.S. and B.J.B. have had prior encounters with child protection services. App. 14; Tr. p. 27, lns. 3-4; June 24, 2020. There has been referrals to family preservation case management, domestic violence services, intervention, safety-planning, etc. App. 14; Tr. p. 34, lns. 6-12; June 24, 2020. Ms. Olson recommended the children continue to be in the custody, care, and control of Grand Forks County up to a year from the date of removal. App. 14; Tr. p. 35, lns. 14-19; June 24, 2020.

¶10 Ms. Olson did not believe any of the factors regarding the children were related to financial difficulties. App. 14; Tr. p. 37, lns. 20-23; June 24, 2020. However, Ms. Olson

also admitted that due to financial reasons, A.J.S. and B.J.B. did not have money for basic necessities such as food, clothing, pull-ups, or lodging. App. 14; Tr. p. 37-38, lns. 24-5; p. 39, lns. 3-7; June 24, 2020.

¶11 The Court found the State met its burden of clear and convincing evidence that A.S. and M.B. are deprived. App 42; 14; Tr. p. 41, lns. 9-15; June 24, 2020. The Court supported its findings due to the prior history with social services, inadequate supervision, sexual abuse, prenatal drug use, A.S. using pull-ups, hygiene of A.S., and the parents yelling at A.S. App. 14; Tr. p. 41-42, lns. 16-13; June 24, 2020. The Court noted little follow-up on behalf of the parents since the children were taken into custody of Grand Forks County Human Services Zone, despite Covid being in full swing. App. 14; Tr. p. 42, lns. 18-22; June 24, 2020. The Court placed A.S. and M.B. in the care, custody, and control of Grand Forks County Social Services for a period of up to 12 months from the date of removal, March 30, 2020. App. 42; 14; Tr. p. 44, lns. 19-23; June 24, 2020. The Court signed its Order on July 24, 2020. App. 42. A.J.S. timely filed a Notice of Appeal on July 31, 2020. App. 46, 47.

LAW AND ARGUMENT

I. Standard of Review.

¶12 The standard of review on questions of law in juvenile court is de novo, whereas questions of fact are reviewed under the clearly erroneous standard. Interest of K.H., 2006 ND 56, ¶7, 718 N.W.2d 575, 577-578. When a matter is tried before a court, without a jury, N.D.R.Civ.P 52(a) requires that a court makes its finding of facts and conclusions of law specifically, so as to provide a “clear understanding of the court’s decision.” Interest of J.A.H., 2014 ND 196, ¶12, 855 N.W. 2d 394, 398 citing Interest of T.R.C., 2014 ND 172

¶9, 852 N.W.2d 408. This Court has indicated that “[c]lear and convincing evidence means evidence that leads to a firm belief or conviction the allegations are true.” Interest of S.R.F., 2004 ND 150, ¶7, 683 N.W.2d 913, 916. “A finding of fact is clearly erroneous if there is no evidence to support it, if the reviewing court is left with a definite and firm conviction that a mistake has been made, or if the finding was induced by an erroneous view of the law.” Interest of B.J.K., 2005 ND 138, ¶ 10, 701 N.W.2d 924. “We give ‘due regard to the juvenile court’s opportunity to judge the credibility of witnesses.’” Id.

II. Whether the Juvenile Court erred by finding the children are deprived.

¶13 Pursuant to North Dakota Century Code Section 27-20-02(8)(a), a deprived child is defined as follows:

"Deprived child" means a child who:

a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;

N.D.C.C. § 27-20-02(8). The phrase “proper parental care” refers to the minimum standard of care which the community will tolerate. Interest of K.R.A.G., 420 N.W.2d 325, 327 (N.D. 1988). Such care must be a flexible gauge which necessarily will vary dependent upon the health, age, size, and intelligence of the child involved, as well as the circumstances of the particular incident involved, the weight any one of these factors will have in a given case is also determined by the facts of that case. Interest of W., 90 N.W.2d 675 (N.D. 1980).

¶14 In the present case, A.J.S. argues that the primary reason for any alleged deprivation was due to financial limitations. A.J.S. and B.J.B. did not have money for basic necessities such as food, clothing, pull-ups, or lodging. App. 14; Tr. p. 37-38, lns. 24-5; p. 39, lns. 3-

7; June 24, 2020. Pursuant to North Dakota Century Code Section 27-20-02(8)(a), a child may not be deprived if primarily due to lack of financial means of the child's parents. A.J.S. argues that is the case today.

CONCLUSION

¶15 A.J.S. respectfully requests this Court reverse the District Court finding the children to be deprived.

Dated 29th day of October, 2020.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Appellant brief contains 9 pages consisting of the cover page through the conclusion and signature block and complies with the page limits outlined in North Dakota Rules of Appellate Procedure Rule 32(a)(8)(A).

Dated 29th day of October, 2020.

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